



**THE ATTORNEY GENERAL  
OF TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

October 8, 1949

Hon. Stewart W. Hellman  
Criminal District Attorney  
Tarrant County  
Fort Worth, Texas

Opinion No. V-925  
Re: The effect upon the tax exempt  
status of a charitable hospital  
of compensating the doctor in  
charge of anesthesiology, path-  
ology or radiology on a fee or  
profit-sharing basis.

Dear Mr. Hellman

Your letter requesting our opinion relative to the cap-  
tioned matter reads as follows:

"Request is made for an opinion from your De-  
partment as to whether the compensation on a fee  
basis or a profit-sharing basis of doctors in  
specialized fields of hospital service when paid  
by charitable hospitals would forfeit the ad valor-  
em tax exemption for such institution.

"By way of back ground we refer to Section 2  
of Article 8 of the Constitution of Texas author-  
izing the Legislature by general law to exempt from  
taxation all buildings used exclusively and owned  
by institutions of purely public charity; Article  
7150(7), R.C.S., wherein the Legislature has exer-  
cised such authority; and the cases cited in your  
Opinion No. V-374 to the effect that in order to  
qualify for such tax exemption the property must  
be owned by the organization claiming the exemp-  
tion and must be used exclusively by such organi-  
zation.

"Larger hospitals have divisions of hospital  
service, usually composed of a Department of Anesthe-  
siology, a Department of Pathology, and sometimes a  
Department of Radiology. These hospital services  
are furnished by the hospital under the direction  
of the doctor in charge of the respective department  
at the request of or on order of the attending  
physician. The hospitals make the charge for the  
anesthesia, the pathology and/or the radiology and  
the net proceeds therefrom go to the furtherance of  
the charitable work of the hospital, the doctors in

charge of such departments being on salaries paid by the hospitals in most cases.

"However, these three fields of hospital service are specialized fields, and to obtain the finest doctors for this purpose and improve the hospital service, it is usually necessary to employ doctors who have certain high standings in certain medical societies in their field. These societies for the improvement of service and the maintenance of high ethics sometimes require, and always prefer, that its doctor members not serve on salaries but be compensated by fees.

"Attorney General's Opinion No. 0-3572, approved August 18, 1941, would cover the point that the employment of such doctors, either on a fee or salary basis, would not violate the Medical Practice Act. Attorney General's Opinion No. V-374, dated September 12, 1947, covers the point that such a physician may use his own equipment and leave it in unused space in the hospital, without forfeiting the ad valorem tax exemption. But neither of the Opinions referred to covers the point as to whether the employment of such doctor on a fee or profit-sharing basis would forfeit the ad valorem tax exemption otherwise enjoyed by charitable hospitals.

"Therefore, the question on which we would like to have your opinion is whether charitable hospitals, otherwise entitled to ad valorem tax exemption under the Constitution and Laws of Texas, would forfeit such ad valorem tax exemption by remunerating the doctor heads of their departments of hospital service on (1) a fee basis, or (2) a net profit-sharing basis -- instead of on a salary basis. The fee basis mentioned would mean that the hospital would agree with the pathologist that instead of his receiving a salary, he would receive a fee of a certain amount of money for each case handled, or each service rendered, whether or not the hospital was successful in collecting such fee from its patient. The profit-sharing basis would mean that from the gross fees collected by the hospital from work performed by the particular department, the hospital would pay the expenses attributable to such department, and the net proceeds or balance, would be divided on a percentage basis with the doctor head of such department.

"In view of the fact that a specific portion of the hospital is customarily assigned for the work of these hospital service departments, and in view of the fact that the doctor heads of such departments usually have personal demand and direction over such departments, the local hospitals are hesitant to accede to the wishes of the doctors in changing their remuneration from that of a salaried employee, lest in doing so the hospital subject itself to ad valorem taxes, which in turn would cause a substantial curtailment in charity services provided."

Section 2 of Article VIII of the Texas Constitution authorizes the Legislature to exempt from taxation institutions of purely public charity. In pursuance to such authority the Legislature exempted the real property of institutions of purely public charity. This legislation has been codified as Section 7, Article 7150, V.C.S., and reads as follows:

"All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

In Santa Rosa Infirmary v. City of San Antonio, 259 S.W. 926 (Tex. Comm. App. 1924), it is stated:

"The constitutional requirement is twofold; the property must be owned by the organization claiming the exemption; it must be exclusively used by the or-

ganization, as distinguished from a partial use by it, and a partial use by others, whether the others pay rent or not."

Other cases applying this same rule are City of Houston v. Scottish Rite Association, 111 Tex. 191, 230 S.W. 978 (1921); Morris v. Masons, 68 Tex. 698, 5 S.W. 519 (1887).

As stated by the Court of Civil Appeals in Markham Hospital v. City of Longview, 191 S.W. 2d 695 (Tex. Civ. App. 1945, error ref.):

"It appears from the holding by the Supreme Court in the City of Houston v. Scottish Rite Assn., supra, Red v. Johnson, 53 Tex. 284, 288, and Benevolent & Protective Order of Elks v. City of Houston, Tex. Civ. App., 44 S.W. 2d 488, that the relationship of landlord and tenant or the payment of rents, either or both are necessarily requisites to destroy the exemption granted a purely charitable institution from taxes, . . . ."

The court in City of Corpus Christi v. Fred Roberts Memorial Hospital, 195 S.W. 2d 429 (Tex. Civ. App. 1946, error ref. n.r.e.), held that a hospital was not being operated or used exclusively for public charity where the hospital entered into a contract by the terms of which a man and his wife agreed to operate the hospital, taking such earnings of the hospital over and above \$300 each month as a salary. The court based its holding on the ground that the contract created the relationship of landlord and tenant with the result that the charitable corporation itself was not actually operating the hospital.

In City of Longview v. Markham-McRee Memorial Hospital, 137 Tex. 178, 152 S.W. 2d 1112 (1941), the following facts were before the court. Two doctors paid the hospital \$100 per month rent as part payment for office space. The doctors acted as house physicians to take care of emergency cases and gave free treatment to charity patients. Despite the fact that the presence of a doctor at all times was necessary to the proper operation of the hospital, the court held that the renting of office space was a commercial and private transaction which resulted in a loss of the tax exemption.

In Markham Hospital v. City of Longview, supra, the court held that the hospital was deprived of its exemption from taxation by reason of the fact that the hospital employed a laboratory technician who performed laboratory tests for patients in the hospital as requested by the physicians, but who also was permitted to carry on a private business using the hospital laboratory.

We are assuming that the real property is owned by the charitable institution or institutions in question. In addition to being owned by the charitable institution, the property must be exclusively used by it. If by compensating the doctors for their services by fees or by contracting to pay them by a percentage of the income creates a landlord and tenant relationship or constitutes a renting or leasing of the premises, then the exemption would be lost. On the other hand, if the relationship of employer and employee still exists, then the use of the property by the doctors will constitute the use by the institution. It is a rather common practice in these modern times to recompense employees by either a fixed salary, fees, or on an income-sharing basis, or by two or all of said methods.

It is therefore our opinion that the mere payment by a charitable hospital of a doctor in charge of anesthesiology, pathology, or radiology by fees or on an income-sharing basis, instead of a fixed salary, does not destroy the relationship of employer and employee and the institution would not by reason thereof lose its tax exempt character.

#### SUMMARY

A charitable hospital will not lose its tax exempt status by compensating its doctors in charge of anesthesiology, pathology, or radiology on a fee or income-sharing basis instead of a fixed salary, as the relationship of employer and employee will not thereby be destroyed. Tex. Const. Art. VIII, Sec. 2; Art. 7150, Sec. 7, V.C.S.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By s/ W.V. Geppert  
W.V. Geppert

WVG/mwb/wc

APPROVED  
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ATTORNEY GENERAL